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ruption, a subsequent desertion does not revive the offence, so as to add the period before to that after. *Hitchcock v. Hitchcock*, 15 App., D. C., 81; *Ex Parte Aldridge*, 1 Sw. & Tr., 88. In general, cohabitation will constitute condonation, as in the principal case. *Reed v. Reed*, 62 Ark., 611; *Phelan v. Phelan*, 135 Ill., 445; *Rogers v. Rogers*, 67 N. J. Eq., 534. But *Kennedy v. Kennedy*, 87 Ill., 250, where there was cohabitation for one night and two days, and *Danforth v. Danforth*, 88 Me., 120, where the husband visited his wife and for two or three nights occupied the same bed, hold there was no condonation. These cases seem to hold that in desertion, unlike adultery, (see *Delliber v. Delliber*, 9 Conn., 233, and *Anonymous*, 6 Mass., 147), but as in cruelty, the mere fact of sexual intercourse alone will not constitute condonation. See *Gardner v. Gardner*, 2 Gray, 434, and *Cox v. Cox*, 5 N. Y. Supp., 367. However, condonation is less readily inferred against the wife than against the husband. *Miles v. Miles*, 101 Ill. App., 406; *Horne v. Horne*, 72 N. C., 530; *Wright v. Wright*, 6 Tex., 3. But it is well settled that acts implying neither cohabitation nor intercourse, such as visits to the children or living separately in the same house, will not condone the desertion. *Rie v. Rie*, 34 Ark., 37; *Stein v. Stein*, 5 Colo., 55; *Anshutz v. Anshutz*, 16 N. J. Eq., 162.

HUSBAND AND WIFE—ACTIONS FOR SEPARATE MAINTENANCE—ALLOWANCE OF ATTORNEY'S FEES.—*KIDDLE V. KIDDLE*, 133 N. W., 181 (NEB.).—*Held*, that it is the settled rule in this court that in a suit by a wife for separate maintenance, or for alimony alone, the court may at any time during the pendency of the suit make an allowance to the wife of a reasonable sum as suit money, including attorney's fees, to be paid by the husband as the court may direct.

In England and in most of the United States, the allowance of suit money and counsel fees to the wife in actions for separate maintenance is treated as a common-law right, where not granted by statute. *Fitzgerald v. Fitzgerald*, 5 Eng. Ecc., 472; *Larkin v. Larkin*, 71 Cal., 330; *McGee v. McGee*, 10 Ga., 477; *Wagner v. Wagner*, 36 Minn., 239. *Contra*, *Kelley v. Kelley*, 161 Mass., 111; *Sanford v. Sanford*, 2 R. I., 64, and *Therkelsen v. Therkelsen*, 35 Or., 75, holds that under statute allowance is not permitted. And the weight of American authority holds, contrary to the English rule, that the attorney can not recover from the husband. 2 *Bish. on M. & D.*, Sec. 388; *Shelton v. Pendleton*, 18 Conn., 417; *Ray v. Alden*, 50 N. H., 82; *Wing v. Hurlburt*, 15 Vt., 607. *Contra*, *Glenn v. Hill*, 50 Ga., 94; *Ottaway v. Hamilton*, 3 C. P. D., 393. The allowance is generally granted as a matter of course, a *prima facie* case being a prerequisite. *Litowich v. Litowich*, 19 Kan., 451; *Dougherty v. Dougherty*, 8 N. J. Eq., 540; *Bardin v. Bardin*, 4 S. D., 305. But it may be denied where the wife has means, or the husband is destitute. *Brady v. Brady*, 144 Ala., 414; *Kenemer v. Kenemer*, 26 Ind., 330; *Coad v. Coad*, 40 Wis., 392. *Contra*, *Lumpkin v. Lumpkin*, 78 Ill., 324; *Mangels v. Mangels*, 6 Mo., App., 481; and *Rawson v. Rawson*, 37 Ill. App., 491, holds that the wife's adultery will bar her right, but the better rule is that after showing probable cause the

merits of the case will not enter. *Cupples v. Cupples*, 31 Colo., 443; *Frith v. Frith*, 18 Ga., 273; *Porter v. Porter*, 41 Miss., 116. Such allowances are made at the discretion of the court, and may be for any time from commencement to dismissal of the suit, including appeals, but not after termination adversely to the wife. *Ex Parte Winter*, 70 Cal., 291; *Holleman v. Holleman*, 69 Ga., 676; *Newman v. Newman*, 67 Ill., 167. So also he is liable, in the absence of condonation, if the suit is dismissed. *Weaver v. Weaver*, 33 Ga., 172; *Waters v. Waters*, 49 Mo., 385; *Chase v. Chase*, 29 Hun., (N. Y.) 527.

LIMITATION OF ACTIONS—ESTOPPEL—AGREEMENT TO WAIVE.—SMITH v. DUPREE, 140 S. W., 367 (TEX.).—*Held*, that where, prior to the expiration of limitations, the plaintiff requested payment, and defendant, on special occasions importuned plaintiff not to sue, agreeing that he would not plead limitations against the debt, on which request and promise plaintiff relied and forbore to sue, defendant was estopped, on being sued after limitations had run, to plead the statute.

The rule stated in the leading case has been often approved. *Bridges v. Stevens*, 132 Mo., 524; *Bancroft v. Roberts*, 91 N. C., 363; *Holman v. Bridge Co.*, 117 Ia., 268. But mere indulgence by the creditor at the request of the debtor does not estop him from pleading the statute. *Hill v. Hilliard*, 103 N. C., 34. Some cases hold an agreement not to plead the statute is void as against public policy. *Nunn v. Edmiston*, 9 Tex. Civ. App., 562; *Wright v. Gardner*, 98 Ky., 454. At least this is true if the waiver is for all time. *Crane v. French*, 38 Miss., 503. In some states the agreement operates as an acknowledgement of the debt, and must be in writing. *Hodgdon v. Chase*, 29 Me., 47; *State Loan Co. v. Cochran*, 130 Cal., 245; *Shapley v. Abbott*, 42 N. Y., 443. It has also been held that the agreement must be made before the statute has run. *Trask v. Weeks*, 81 Me., 325. And there must be a valid consideration for the promise. *State Loan Co. v. Cochran*, 130 Cal., 245. In *Holman v. Bridge Co.*, 117 Ia., 268, it is held that such an agreement may operate by way of estoppel to plead the statute, though it does not amount to a valid contract. But in *Shapley v. Abbott*, 42 N. Y., 443, the contrary is held on the ground that, since the representation is not one of fact, the maker can not be estopped by it.

MANDAMUS—COMPELLING CONSTRUCTION OF RAILROAD—PETITIONER.—PEOPLE v. UNITED TRACTION CO., 130 N. Y. SUPP., 477.—*Held*, a private person, not interested otherwise than as one of the public, cannot have *mandamus* to compel a street railroad company to build its franchise, the grievance which he would attempt to redress being a public and not a private injury, for which only the state may sue. Betts, J., *dissenting*.

The authorities are not in harmony as to the right of an individual to enforce a public right or to compel the performance of a public duty by *mandamus*. In some states a private individual, having no interest